IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.Rev.Pet.No. 537 of 2000()

CRA.72/1995 of ADDL.SESSIONS COURT, KOTTAYAM
SC.87/1992 of ASSISTANT SESSIONS COURT,KOTTAYAM
.....

REVN. PETITIONER: APPELLANT/ ACCUSED:

RAMAKRISHNAN NAIR @
KANTATHIL MOHANAN NAIR,
S/O.SANKARAN NAIR, NEDUVELIL VEEDU,
NEDUMKUNNAM KARA, NEDUMKUNNAM VILLAGE.

BY ADV. SRI.A.MOHAMMED
SRI.M.SAJJAD

RESPONDENT/ RESPONDENT/ COMPLAINANT:

STATE OF KERALA, REP.BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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J.B. KOSHY, J.

Crl.R.P. NO. 537 of 2000

Dated this the 29th day of October, 2007

Order

Revision petitioner was found guilty for offences punishable under section 323 of the Indian Penal Code. It is alleged that on 17.4.1991 at about 8.45 p.m. a quarrel took place between the petitioner and the deceased and in that quarrel the deceased fell down on the road. The accused was charged for offence punishable under section 304 of the Indian Penal Code. It has come out in evidence that there was a quarrel between the petitioner and the deceased. Genesis of the incident was not proved. Ante-mortem injuries found in the body shows that no serious injury was caused by the accused in the incident. There is no case that the accused used any weapons. Evidence is that he only dragged the deceased. The trial court was of the view that he only intended to cause hurt, but, death happened. Abrasions on the body of the deceased during a sudden fight between the petitioner and the deceased. The accused and deceased were friends. Unfortunately he died. According to the accused, he only caught hold of the deceased when he fell down. There is no mention about blood in Ext.P6 scene mahazar. But, witness deposed that deceased

vomited blood on the way to the hospital. He was taken to M.G.D.M. Hospital where he died. No records from that hospital was produced to find out the cause of death. Ext.P5 is the post-mortem certificate and it is proved by the examination of the concerned doctor as PW6. It is stated in Ext.P5 certificate that the death was caused due to coronary insufficiency. The injuries noted in Ext.P5 are as follows:

> "1. Multiple abrasions 0.1 x 0.1 c.m. scattered sparsely and irregularly around legs and top of feet with brown contracted scabs.
>
> 2. Abrasion 0.8 x 0.2 c.m. vertical with brownish red scab on the back of left upper arm 12 c.m. above elbow.
>
> 3. Abrasion 0.2 c.m. in diameter with brownish red scab on front of left forearm 6 c.m. above wrist.
>
> 4. Abrasion 0.5 x 0.5 c.m. on lower surface of left scrotum 3 c.m. from mid-line.
>
> 5. Abrasion 0.5 x 0.5 c.m. 1 c.m. inner to injury No.4 at 8 o'clock position.

Injury Nos.1 to 3 and 5 must have been caused when the deceased fell down in the road. Injury No.4 must have been caused when the accused caught hold of the deceased. According to PW6, there are clear findings in Ext.P5 to suggest that the deceased was having coronary insufficiency. It is stated in Ext.P5 that the heart walls of

left and right ventricles had a thickness of 2.3 c.m. and 1.1 c.m. respectively except for lower half of front, back and interventricular walls of left ventricles. PW6 has deposed that final opinion was reserved pending chemical and histo-pathological examinations. Coronary insufficiency according to PW6 means deficient blood supply to heart due to narrowing or obstruction of the artery supplying the blood to the heart. There is no reason to disbelieve the opinion of PW6 that there was findings to suggest that the deceased was a heart patient. The trial court also found as follows:

> "..... It is admitted by PW6 that the abrasion on the skin of the scrotum can be caused even by scratching with nail. In order to accept the version of PW6 about the cause of death, it is necessary to prove that the deceased was dragged to a distance of 15 to 20 feet pulling the scrotum. I find that there is no such evidence available in this case."

It cannot be stated that the injuries caused in the quarrel which led to the death. No dangerous weapon was used or grievous injury was caused by the accused. He was convicted under section 323 only. He was sentenced to undergo rigorous imprisonment for three months. The incident occurred in 1991. 16 years have passed. I am not interfering in the conviction entered under section 323 IPC. Considering the nature of the evidence, I modify the sentence to

undergo rigorous imprisonment for ten days and to pay a fine of Rs.1,000/-. The period of imprisonment already undergone can be set off. If the fine amount of Rs.1,000/- is not paid, he shall undergo default sentence of one month.

The criminal revision petition is allowed confirming the conviction and modifying the sentence.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

Crl.R.P. No.537/2000

Order

Dated:29th October, 2007